APPENDIX A

Statutes Involved

Securities Exchange Act, § 28, 48 Stat. 903 (1934), 15 U.S.C. 78bb (1963)

§ 78bb. Effect on existing law

(a) The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this chapter shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of. Nothing in this chapter shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this chapter or the rules and regulations thereunder.

(b) Nothing in this chapter shall be construed to modify existing law (1) with regard to the binding effect on any member of any exchange of any action taken by the authorities of such exchange to settle disputes between its members, or (2) with regard to the binding effect of such action on any person who has agreed to be bound thereby, or (3) with regard to the binding effect on any such member of any disciplinary action taken by the authorities of the exchange as a result of violation of any rule of the exchange, insofar as the action taken is not inconsistent with the provisions of this chapter or the rules and regulations thereunder.

Appendix A

Federal Rules of Civil Procedure

Rule 52. Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or made additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

Appendix A

New York Business Corporation Law

§ 626. Shareholders' derivative action brought in the right of the corporation to procure a judgment in its favor

(d) Such action shall not be discontinued, compromised or settled, without the approval of the court having jurisdiction of the action. If the court shall determine that the interests of the shareholders or any class or classes thereof will be substantially affected by such discontinuance, compromise, or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to the shareholders or class or classes thereof whose interests it determines will be so affected; if notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

New York Civil Practice Law and Rules

Rule 2221. Motion affecting prior order

A motion for leave to renew or to reargue a prior motion, for leave to appeal from, or to stay, vacate or modify, an order shall be made, on notice, to the judge who signed the order, unless he is for any reason unable to hear it, except that:

1. if the order was made upon a default such motion may be made, on notice, to any judge of the court; and

2. if the order was made without notice such motion may be made, without notice, to the judge who signed it, or, on notice, to any other judge of the court.

A motion made to other than a proper judge under this rule shall be transferred to the proper judge.

Rule 5015. Relief from judgment or order

(a) Grounds. The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:

1. excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry; or

2. newly-discovered evidence which, if introduced at the trial, would probably have produced a different result and which could not have been discovered in time to move for a new trial under section 4404; or

3. fraud, misrepresentation, or other misconduct of an adverse party; or

4. lack of jurisdiction to render the judgment or order; or

5. reversal, modification or vacatur of a prior judgment or order upon which it is based.

New York Civil Practice Act

§ 294. General provisions relating to orders.

An order for the taking of testimony by deposition, under any provision of this article, or an order denying a motion to vacate a notice given pursuant to section two hundred and ninety, may prescribe terms and conditions, not incon-

sistent with this article. If the testimony is to be taken wholly or partly upon oral examination, the order shall provide for notice thereof to the parties, or prospective parties, of the time and place and, in the discretion of the court, the order may fix such time and place. If the order relate to the taking of testimony without the state, it either may direct the issuance of a commission or that the testimony be taken before an authorized officer or person.

§ 296. Production of books and papers.

1. The order or notice for taking the deposition of a party may require, in a proper case, the production of books and papers in the custody of the party to be examined, as to the contents of which an examination or inspection is desired, and on the examination the books and papers or any part or parts thereof may be offered and received in evidence in addition to the use thereof by a witness to refresh his memory.

2. If the deposition to be taken is that of a person other than a party, an order therefor may require, in a proper case, the production of books and papers in the custody of the person to be examined for use upon the examination as provided in subdivision 1. If such deposition is to be taken pursuant to a notice, or if the deposition is to be taken pursuant to an order and the books and papers are in the custody of a person other than the person to be examined, a subpoena duces tecum may require the production of such books and papers for use upon the examination as provided in subdivision 1.

§ 298. Testimony to be taken by stipulation.

The parties to an action may stipulate in writing that the testimony of a witness may be taken by deposition,

within or without the state, or that an order be entered for that purpose. The officer or person authorized by stipulation to take the testimony may take the same as if an order had been made therefor by the court. This section, however, does not apply to the examination of a person confined in a prison or jail within the state under sentence for a felony.

§ 301. Before whom testimony may be taken.

Testimony may be taken within the state before any judicial officer, notary public, commissioner of deeds, or attorney and counsellor at law. Testimony may be taken without the state before any such officer or attorney in the state or territory where the witness is, or, if a commission be issued, before a person or persons designated therein. Testimony shall not be taken, however, within or without the state, before any such officer, attorney or person who is counsel or attorney for any party or prospective party or who would be disqualified, by reason of affinity or consanguinity to a party, or interest in the event, from serving as a juror upon the trial of the action, unless such officer or person be mutually agreed upon by the parties.

§ 302. Manner of taking testimony.

If testimony be taken within the state, the examination shall be upon oral questions unless the parties otherwise stipulate; but if the testimony is to be taken without the state the court in which the action is pending or may be brought, upon motion, may order the taking of testimony wholly or partly upon written interrogatories to be settled as prescribed by the rules. The officer or person before whom the testimony is taken shall administer to the wit-

ness an oath or affirmation, in form as administered to a witness in court. Upon every oral examination, within or without the state, the person or officer before whom the testimony is taken must take down or cause to be taken down every question and answer unless the parties consent or an order directs that only the substance of the testimony be inserted.

The deposition, when completed, must be read by, or carefully read to, the person examined and must be subscribed by him. These requirements may in the discretion of the court be waived for good cause shown. If the person examined refuses to subscribe the deposition without reasonable cause he shall be liable for the damages sustained by the party aggrieved in consequence of the refusal, and fifty dollars in addition thereto. Those sums may be recovered in one action or in separate actions. If the person examined is a party to the action in which the examination was held and refuses to subscribe the deposition without reasonable cause, the court upon motion may also strike out that portion of his pleading relevant to the subject of the examination.

New York Rules of Civil Procedure

Rule 128. Papers to authorize officer or person to proceed with examination.

Before proceeding with an examination under a commission, order, stipulation or notice for the taking of testimony by deposition, the officer or person before whom it is to be taken shall have the commission, the stipulation or a certified copy thereof, if the stipulation shall have been filed, a certified copy of the order or a copy of the notice, as the case may be, under which he is authorized to act, together

with proof of service of any order or notice required to be served. If he shall have only the notice for taking depositions provided for in section two hundred and ninety of the civil practice act, with proof of service thereof, he shall require the party at whose instance the notice was served, or the counsel by whom he is represented at the hearing, to make affidavit that, to the best of his knowledge, information and belief, no motion has been made under section two hundred and ninety-one of the civil practice act to modify or vacate the notice, or, if made, that the motion has been heard and denied and that no stay of proceedings in the matter is in force. If the testimony is to be taken without the state, such officer or person shall also be provided by counsel for the party seeking the examination with a copy of this title of the rules and of article twenty-nine of the civil practice act. Proof of service of any order or notice referred to in this rule shall be made by affidavit.

Rule 130. Special provisions as to depositions taken without the state.

An officer or person before whom testimony is taken without the state shall comply with the following directions:

1. If an exhibit be produced and proved, he shall annex to the deposition the exhibit, or a copy thereof if the original be not surrendered, subscribed by the witness proving it, and numbered or otherwise identified, in writing thereon, by the officer or person taking the deposition, who must subscribe his name thereto;

2. He shall subscribe his name to each single sheet of the deposition;

3. He shall annex to the deposition the papers authorizing him to proceed with the examination, together with the interrogatories, if any;

4. He shall annex to each deposition, his certificate setting forth:

a. That the witness was duly sworn, and that the deposition was duly taken and is a true record of the testimony of the witness and of all questions and answers required to be inserted;

b. That the signature of the witness to the deposition and any exhibit or copy attached thereto is genuine;

c. A statement of all appearances by the parties and attorneys.

5. On the completion of the examination, he shall enclose in a single packet, securely sealed, the deposition or depositions and all papers required to be annexed thereto;

6. If the notice, stipulation or order contains a direction to return the deposition by mail, or if there is no direction as to the manner of the return, he must immediately deposit the packet in the post office, postage prepaid, and addressed to the clerk with whom it is required to be filed at his office;

7. If there be a direction to return the same by an agent of the party, at whose instance the testimony is taken, the packet so addressed must be delivered to the agent;

8. A notice, stipulation or order for the taking of a deposition before two or more persons may be executed by one or more of them.

Appendix A

Rule 132. Where depositions are to be filed and kept.

Each deposition, and the papers required to be annexed thereto, shall be filed, within ten days after its completion and return, in the office of the clerk of the court, in the county in which the action is triable or special proceeding pending unless such filing is waived by stipulation. Each deposition, and the papers annexed, shall remain on file with such clerk, unless otherwise provided by stipulation of the parties, or unless the court, by order, directs them to be filed with another clerk. They shall always be open to the inspection of the parties, each of whom is entitled to make copies thereof.

27A. Minnesota Statutes Annotated: Rules of Civil Procedure.

26.01 When Deposition May be Taken.

Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. After commencement of the action, the deposition may be taken without leave of court, except that leave, granted with or without notice, must be obtained if notice of the taking is served by the plaintiff within 20 days after commencement of the action. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. Depositions shall be taken only in accordance with these rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

Appendix A

26.02 Scope of Examination.

Unless otherwise ordered by the court as provided by Rule 30.02 or 30.04, the witness may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence. The production or inspection of any writing obtained or prepared by the adverse party, his attorney, surety, indemnitor, or agent in anticipation of litigation or in preparation for trial, or of any writing that reflects an attorney's mental impressions, conclusions, opinions, or legal theories, or, except as provided in Rule 35, the conclusions of an expert, shall not be required.

26.04 Use of Depositions.

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness on material matters only.

(2) The deposition of a party or of any one who at the time of taking the deposition was a managing agent or employe of the party or an officer, director, managing agent or employe of the state or any political subdivision thereof or of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (a) that the witness is dead; or (b) that the witness is at a greater distance than 100 miles from the place or trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or (c) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (d) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (e) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witness orally in open court, to allow the deposition to be used. . . .

RULE 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN.

28.01 Within the United States.

Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or

of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

RULE 29. STIPULATION REGARDING THE TAKING OF DEPOSITIONS.

If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner, and when so taken may be used like other depositions.

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION.

30.01 Notice of Examination; Time and Place.

A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause enlarge or shorten the time.

RULE 31. DEPOSITIONS OF WITNESSES UPON WRITTEN INTERROGATORIES.

31.01 Serving Interrogatories; Notice.

A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every

other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter, a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within 5 days thereafter, the latter may serve redirect interrogatories upon a party who has served cross interrogatories. Within 3 days after being served with direct interrogatories, a party may serve recross interrogatories upon the party proposing to take the deposition.

RULE 37. REFUSAL TO MAKE DISCOVERY; CONSEQUENCES.

37.01 Refusal to Answer.

If a party or other witness refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in which the action is pending or the court in the district where the deposition is taken for an order compelling an answer. Upon the refusal of a witness to answer any interrogatory submitted under Rule 31 or upon the refusal of a party to answer any interrogatory submitted under Rule 33, the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the court finds that the

refusal was without substantial justification, the court shall require the refusing party or witness and the party or attorney advising the refusal or both of them to pay to the examining party the amount of the reasonable expense incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

37.02 Failure to Comply with Order.

(1) Contempt. If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so, the refusal may be considered a contempt of the court making the order or the court in which the action is pending.

(2) Other Consequences. If any party or an officer or managing agent of a party refuses to obey an order made under Rule 37.01 requiring him to answer designated questions, or an order made under Rule 34, or an order made under Rule 35, the court may make such orders in regard to the refusal as are just, and among others the following:

(a) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, of the mental or physical or blood condition sought to be examined, or

any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him for introducing in evidence designated documents or things or items of testimony, or from introducing evidence of mental or physical or blood condition sought to be examined;

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(d) Where a party has failed to comply with an order under Rule 35.01 requiring him to produce another for examination, such orders as are listed in paragraphs (a), (b), and (c) of this rule, unless the party failing to comply shows that he is unable to produce such person for examination.

(e) In lieu of any of the foregoing orders or in addition thereto an order directing the arrest of any party for disobeying any of such orders except an order to submit to mental or physical or blood examination.

RULE 45. SUBPOENA.

45.07 For Production of Documentary Evidence.

A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon

motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

45.06 Contempt.

Failure to obey a subpoena without adequate excuse is a contempt of court.

38. MINNESOTA STATUTES ANNOTATED:

38. Minnesota Statutes Annotated:

597.18 Depositions for use in other states.

Any witness may be compelled, in the manner and under the penalties prescribed in this chapter, to give his deposition in any case pending in a court of any other state or country, which deposition may be taken before any justice of the peace or notary public, or before any commissioner appointed under the authority of the state or country in which the action is pending; and the clerk of any district court of this state may issue subpoenas to such witnesses to appear before the person taking such deposition.

APPENDIX B

Petitioners' Errata

The misstatements and misleading implications and innuendoes in petitioners' brief are too numerous to cover in their entirety. However, the following instances of serious misrepresentation suffice to demonstrate the unreliability of their brief and the validity of our complaints as to statements in it:

Misstatement in Petitioners' Brief, p. 5

"From these projections, Kirby, Young, Purcell and Anzalone learned by August 1949 that the per-share earnings of IDS, which had been $1.25 in 1948, were reliably forecast to be $4.59 in 1949, $5.67 in 1950, $7.80 in 1951, $10.41 in 1952 and $12.53 in 1953 (R. 632, 576, 578-579, 540-542, 585-589, 468, 611-613, 1175, 1147, 1176, 1148-1150, 616-618, 460, 1053, 1105-1118, 1119-1120, 2007)."

Petitioners conceded below—and both courts below found—that Kirby was not connected with any IDS internal projections from which these per-share earnings were computed by petitioners. Many of the references cited by petitioners pertain to events which took place after August 1949 and therefore could not show what Kirby, Young, et al. knew prior thereto.

COMMENT:

Seven of the above record citations refer to information which could not have been available in August 1949, since it was not created until various dates dates between early 1950 and the middle of 1954. Even this more recent information, moreover, does not show the net income figures set forth in petitioners' brief.

Appendix B

Petitioners' citations*	The record facts**
R. 1176—Ex. 336, a letter from Shipman to Waag (9/1/49), requesting that Young and Kirby receive the "Comparative Balance Sheet, June 30, 1949."	This was not a projection and it did not "reliably forecast" IDS income. In any event, the "Comparative Balance Sheet" reports for the months November 1949 through May 1950 were *Zenn* exhibits (K-179, R. 1834).
R. 1175—Ex. 335, a letter from Waag (IDS) to Shipman, dated 9/9/49, and reporting that an IDS Comparative Balance Sheet Income and Surplus Statement as of 6/30/49 was being sent to Kirby and Young. Waag asked that Shipman check off such other reports as were to be sent to Young and Kirby.	Copies of these Comparative Balance Sheets were introduced as *Zenn* exhibits. They contain no projections of future income.
R. 1147—Ex. 257, a letter from Shipman to Waag, dated 9/16/49, checking off the reports that should be sent regularly to Kirby and Young.	If counsel for the *Zenn* stockholders had wanted any of the reports listed on Ex. 257 (none of which contains projections of future income) they could have asked for them by name, since a similar list of reports was marked as a *Zenn* exhibit (Ex. K-354, R. 2060).
R. 616-618—Shipman identifies certain reports from Kirby's files (Exhs. 342 *id.*, 348, 347 *id.*, 340 *id.*, 339) as being the reports of the type referred to in Ex. 257.	Three of these reports (Exhs. 340 *id.*, 342 *id.*, 347 *id.*) are so totally irrelevant that they were never offered in evidence at the trial. Neither of the remaining two reports contains a projection of future income, although

* Under this heading we list and objectively describe each of the record citations given by petitioners in support of their misstatement.

** Under this heading we present our comments on the contents of the items of the record evidence cited by petitioners, listed and described objectively in the column opposite.

Where the same comment applies to more than one of petitioners' record references we so indicate by setting it off under the caption "COMMENT."

Appendix B

Petitioners' citations	The record facts
R. 1119-1120—Exs. 244 and 245 *id.*, the IDS Internal Projections for the year 1949 by months and for the 5 years 1950 through 1954.	they do refer to projections prepared earlier of expected income during the year 1949 only. Neither of these exhibits has been relied upon by petitioners in their brief to this Court.
R. 578-579 — Purcell's testimony that when he went to IDS he studied it closely and that he wrote a letter to Young and Kirby about its expectations as of February 11, 1950.	Both of these reports were prepared some time in 1950; neither could have been available in August 1949, and neither shows the amounts of income set forth in petitioners' brief.
R. 576—Refusal of the trial judge to accept Exs. 362 *id.*-366 *id.*, on a failure to show when they were put in the Alleghany files, or that they were in those files at any time during the hearings before the Referee.	Purcell's letter report to Kirby obviously could not have been available in August 1949. In any event, however, that letter was marked as a *Zenn* exhibit (Ex. 345, R. 1186). These exhibits were prepared at various times between 1951 and 1954, could not have been available in August 1949 and contained no projections of future income.

COMMENT:

Eight of petitioners' record citations refer to Kirby, the defendant in this case. The net of these citations—insofar as they tend to support the statement that Kirby knew of the projected per share earnings set forth in petitioners' brief—is that a copy of the Froggatt Report dated April 29, 1949 (Ex. 220) was sent to Kirby's office in August 1949 (R. 1172), and was returned by Baugeard on September 2, 1949 (R. 1172). As to this report:

(1) Kirby testified that he couldn't remember ever having seen it (R. 450).

(2) It does not show per-share earnings, and does not even show net earnings, since it contains no forecast of the amount to be set aside for certificate reserves (R. 1059). This was IDS' largest single item of expense, and the Froggatt Report itself states that, as of Dec. 31, 1948, IDS was in arrears on certificate reserves—according to SEC standards—in the amount of $26,168,963.85 (R. 1578).

(3) The Chief Actuary of Froggatt & Co. testified below that per-share earnings could *never* be computed from the Froggatt Report alone (R. 691-692).

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(4) In their Reply Brief on Appeal (p. 47), petitioners' counsel acknowledged that this statement by the Chief Actuary of Froggatt & Co. was "literally true," but pointed out that per-share earnings could be computed by comparing the Froggatt Report with Ex. 243, the IDS internal projection. But possession of Ex. 243 makes the Froggatt Report superfluous. Moreover, there has never been any proof tying Ex. 243 to Kirby. The Court of Appeals found that "there was no evidence that Kirby had received these figures" (R. 2335).

Petitioners' citations	**The record facts**
R. 585-589—Shipman's testimony concerning his conferences with Kirby during the period prior to Alleghany's purchase of IDS in April 1949. He told Kirby that the company was "in pretty bad shape, in pretty bad odor . . . under water," (R. 586) but that it had good prospects "which could definitely be expected to be realized" (R. 586). He assured Kirby that IDS' actuarial work was done by a first-rate firm (R. 588-589).	This information is totally irrelevant to petitioners' statement. It shows nothing more than that Kirby was aware of the speculative nature of an investment in a highly-leveraged company like IDS. It also shows that Kirby knew that IDS employed an actuary—something known to anyone who cared to read the IDS Annual Reports (e.g. Ex. K-358, R. 2125).
R. 468—Kirby's testimony that he "constantly discussed IDS with Young, whenever there was anything to discuss" but can't recall seeing or being told of the monthly Summaries of Operations (Exs. 240, 241, 242).	Assuming that Kirby's testimony was that he had seen these Summaries of Operations, he could not have seen them until the middle of April 1950, when they were prepared, and they would have told him nothing about the projected or actual income of IDS for any date beyond March 31, 1950.
R. 632—Shipman's testimony that he went to IDS and made a thorough study in the summer of 1949, after the acquisition of control by Alleghany.	
R. 2007—Purcell's testimony before the *Zenn* Referee that Shipman devoted more time than he did to IDS after Alleghany's acquisition of it, that he visited IDS probably several times	

Appendix B

Petitioners' citations	The record facts
during the period April-August 1949 and that he was in frequent telephone contact with IDS during that period.	
R. 611-613—Shipman's testimony that he sent Ex. 220 (Froggatt Report) to Kirby (R. 612) and that he worked with IDS projections (R. 613).	There is no doubt that Shipman sent a Froggatt Report, dated April 29, 1949, to Kirby's office in Morristown (Ex. 331, R. 1172). However, Kirby's assistant, Baugeard, who was the person who actually received the report, returned it to Shipman on September 2, 1949 (Ex. 331, R. 1172). Kirby does not recall ever having seen the report (R. 450). Shipman testified on R. 613 that he saw IDS' internal one-year and five-year projections, but there is no evidence that Shipman ever sent or Kirby ever received any of those projections.
R. 460—Kirby's testimony that he does not recall receiving reports from Shipman, that Shipman was continuously studying IDS, and reports could have well come into his office and been analyzed by Baugeard, but that he himself never saw them, and that he depended on Young for his information.	
R. 1053—This is the first page of Ex. 220, the Froggatt Report dated April 29, 1949.	
R. 1059—This is the page of the Froggatt Report which contains a tabulation of "Net [IDS] income (before profit or loss on sale of investments or income taxes) available for improving installment certificate reserves including the company's portion of subsidi-	

Appendix B

Petitioners' citations	The record facts
ary companies' earnings (before profit or loss on sale of investments or income taxes)" for the years 1949 through 1953.	

COMMENT:

The remainder of the record references cited by petitioners relate to Young, Purcell and/or Anzalone, but not to Kirby. To some extent, these references support an inference that Young and Purcell saw a copy of Ex. 243 at some time in 1949. Even on petitioners' new theory, however, there must be proof that Young and Purcell concealed this projection in 1955 and 1956.

Young testified in 1955 that he knew of these internal projections of IDS (see App. C pp. 43-44, *infra*); if he had any, they were presumably part of the files he turned over when he produced his files with respect to the 1949-50 exchange (R. 408; Ex. K-355, R. 2083).

Purcell was never asked if he had seen projections of the sort described by Young in his earlier testimony. He did, however, bring such projections with him to the Referee's hearings. They were either looked at and passed over or they were among the documents which "nobody has asked me about" (R. 2055).

Petitioners' citations	The record facts
R. 1148-1150—Ex. 262, an IDS internal memo re the reports to be sent to Purcell (in Cleveland) and to the two other Alleghany directors who were on the IDS Board: H. J. Guild (in Adams, Mass.) and J. J. Anzalone (in Cleveland, Ohio).	
R. 576—Purcell testimony that he knew of the firm which did IDS' accounting in 1949-1950.	So did every other person who read the IDS Annual Reports (Ex. K-358, R. 2116-2132).
R. 540-542—Purcell's testimony that he went to IDS, knew they made projections and summaries of operations, and reported to Young, not to Kirby.	
R. 1104-1118—Ex. 243, the IDS Internal Projection of Net Income for the years 1949 through 1953.	It is from this exhibit that petitioners have made their computation of projected per-share net income.

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Misstatement in Petitioners' Brief, p. 6

"Following the December 6, 1949 meeting, a new set of projections was prepared by IDS (R. 1121-1135, 1136-1137, 1342-1343; see also 2353-2354). These forecast an enormous increase in the IDS per-share earnings over the five years 1950-1955. They forecast that the shares the insiders had offered themselves at $8.15 per-share would earn over $24 per-share in 1950 and that the earnings in each of the following four years would also greatly exceed the purchase price (R. 1121-1135). In the proxy material sent to the shareholders seeking their approval of the transaction, none of the inside information showing the spectacular rise in IDS earnings was revealed (R. 1029-1030, 1031-1038)."

A fair reading of this portion of what obviously purports to be a chronological statement of facts is that subsequent to December 6, 1949 and prior to April 6, or April 26, 1950, when Alleghany mailed its Proxy Statement (Ex. 199, R. 1031) and Supplemental Proxy Statement (Ex. 198, R. 1029), the "insiders", who presumably include Kirby, knew that 1950 earnings of IDS would be $24.00 per-share and that earnings for each of the years 1951-1954 would exceed $8.15 per share. The record does not support this statement.

Initially we note that petitioners' counsel has conceded that he cannot show that Kirby ever knew of the two projections which form the basis of this statement (R. 649). The courts below so found (R. 2335).

COMMENT:

Turning to the record references themselves, we find that even as to Young and Purcell they provide no basis for the charges made.

Petitioners' citations

R. 1029-1038—The proxy statement and supplemental proxy statement for the 1950 meeting of Alleghany stockholders (Ex. 198, R. 1029 and Ex. 199, R. 1031).

The record facts

The first proxy statement was prepared on April 6, 1950. There has been no showing that either of the projections which form the basis for petitioners' calculations was in existence as of this date. Ex. 246 *id.* is dated

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Petitioners' citations	The record facts
R. 1121-1137—Exs. 245 *id.*, and 246 *id.*, the IDS projections for the years 1950-1954 and for the year 1950 by months.	April 14, 1950; Ex. 245 *id.* could not, as we show below, have been prepared prior to April 25, 1950.
	The supplemental proxy statement is dated April 26, 1950 (Ex. 198, R. 1029). By this time, Purcell at least had probably seen Ex. 246 *id.*, which was prepared by IDS on April 14, 1950. Ex. 246 *id.*, however, concerned itself only with 1950 income. It contains no information concerning income in the years after 1950. The one item of future income which caused the 1950 projection to be so optimistic was the Mortgage Department income. That item was discussed in Purcell's letter of February 11, 1950, which was introduced as an exhibit before the Referee in *Zenn* (Ex. 345, R. 1189).
R. 1342-1343—Ex. 362 *id.*, Waag's letter to Purcell dated July 26, 1954, noting that the reference in Ex. 365 *id.* to a projection of earnings for the year 1950 only "was most likely completed in January of 1959 which would indicate that we anticipated a considerable improvement in our mortgage operations."	The one-year projection (Ex. 246 *id.*) is discussed above. As to the five-year projection (Ex. 245 *id.*, R. 1121), petitioners never tried below to prove when it was prepared, and rely now on a conjecture made four years after the event, and Judge Friendly's inference based on that conjecture, to "prove" its preparation in January of 1950.
R. 2353-2354 — Judge Friendly, quoting Waag's conjectural statement,	Ex. 245 *id.* is undated. Although Purcell testified below that he probably received it (R. 601), petitioners' counsel refrained from asking him, or otherwise establishing, when it was prepared. They rely on the conjecture

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Petitioners' citations

infers that the full 5-year projection (Ex. 245 id.) must have been available to Purcell, and probably to Young, before the exchange transaction was ratified on May 3, 1950, and certainly before it was completed on May 18, 1950.

The record facts

in Waag's letter, but even as to that letter, counsel never asked Purcell, to whom the letter was addressed, whether Ex. 245 *id. was* the projection referred to by Mr. Crabb as probably having been prepared in January 1950.

If any inference is to be drawn, it is that Ex. 245 *id.* was not prepared until after the Alleghany stockholders meeting of May 3, 1950, which would make it irrelevant to the *Zenn* issues. Since it was a five-year projection, forecasting IDS income for each of the years 1950-1955, it would logically have been prepared subsequent to the shorter one-year projection of income for 1950 (Ex. 246, R. 1136), which is dated April 14, 1950.

For example, early in 1950 the IDS Mortgage Department prepared a forecast of net income for 1950, which was reported in Purcell's letter of February 11, 1950 (*Zenn*, Ex. 327) as being $5,720,000 (R. 1189). By April 14, 1950, when the one-year 1950 projection for the entire company was prepared, this figure had been refined, and the amount forecast was $5,372,900. This latter amount was carried over to the five-year forecast.

As late as April 25, 1950, however, the IDS Mortgage Department projection for the next year, 1951, was still in the "preliminary" stage (R.

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Petitioners' citations	The record facts
	1208) estimated at $3,770,000 (R. 1212). The record is silent as to when the "preliminary" 1951 forecast was refined and put in final form—or when the forecasts for 1952, 1953 and 1954 were put through the same process of preparation and refinement. It is clear, however, that such a refining process did take place, since the "preliminary" 1951 forecast of $3,770,000 was reduced to $2,625,000 by the time it appeared in the five-year forecast, which petitioners now claim was prepared in January.
Misstatement in Petitioners' Brief, p. 6	
"Shortly after the exchange in May, 1950, the price of IDS stock began to climb. At one point the stock was worth $1600 per share, giving the insiders a profit of two hundred times the purchase price on each share."	**Petitioners neglect to mention that this high point was reached years after the 1949-1950 exchange took place. The very gradual rise of IDS during the years when it was solving its problems with the SEC is reflected in Appendix E, pp. 51-59.**

COMMENT:

The theory in *Zenn*—a theory implicit in petitioners' presentation—that the stockholders were justified in allowing Young and Kirby to keep the IDS stock while it was still a speculative issue, but that once it became clear that the SEC difficulties had been solved and that IDS was on a firm footing (note the rapid rise from the middle of 1952 through the end of 1954), they could sue and disregard the element of laches. The Referee, however, correctly noted that the defense of laches was a serious impediment to eventual victory for the *Zenn* stockholders.

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Misstatement in Petitioners' Brief, pp. 10-11

"Remembering that the Waag enclosures were in Young's possession before he testified, his behavior when two of counsel's demands were addressed directly to him is revealing. After the first Young's attorney interjected that 'a search has been made for all such reports and there are none in Alleghany's files' (R. 1414). Young sat mute throughout this interchange, failing to mention the existence of any projections, including the one he had received from Purcell. Again, on deposition, Young was asked to have a check made of Alleghany's files for any projections or forecasts covering the years 1949-1950. Young answered, 'Gladly', 'Surely', 'Naturally', he would check for such documents (R. 1417). But his 'checking', produced neither the Waag enclosure nor any other projections nor aid it produce testimony relating to those projections. As a result plaintiffs and the Referee were misled into believing that no such projections were in Alleghany's files, and more important, that Young had never seen them prior to the self-dealing transaction."

The record facts

Two facts ought be kept in mind in connection with this glib misrepresentation of the record:

(1) Despite the closing statement to the effect that "plaintiffs and the Referee were misled" the fact of the matter is that none of the quoted statements was made during the hearings before the Referee; they were made during Young's deposition in federal *Zenn*, which was concluded almost five months before the Referee was even appointed.

(2) Young's testimony on his deposition (the full transcript of which was before the Referee as Ex. A) directly contradicts petitioners' assertion that the Referee was misled. The lines of Young's testimony immediately preceding the testimony quoted at R. 1417, to which petitioners refer, were as follows:

"A. I am sure that I received projections, from time to time, of funds available for the meeting of the certificate reserves.

Q. I think you have referred to those, Mr. Young, and I would ask you to put that particular problem aside for a minute, and to turn to the question of earnings forecasts, such as forecasts of earnings from mortgage operations. A. I think I received such forecasts as

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Misstatement in Petitioners' Brief, pp. 10-11

The record facts

I did of sales and all other activities of the company.

Q. Do you have any recollection at what time these forecasts were made? A. I think they were made currently, as part of the corporation's regular routine.

Q. When you say 'currently' would you say from month-to-month? A. I would say once a year that the company would make a projection of the outlook over a period of 5 years.

Q. When you speak of a period of 5 years you are probably again referring now to maturities as they would be met? A. Maturities and income and sales and all the activities of the company, a normal budgetary program which most well-run companies have."

Misstatement in Petitioners' Brief, pp. 11-12

"Both the Froggatt five-year projection—which had been received by the insiders (R. 1172, 1174-1175, 564-565) prior to the taking of the IDS stock—and the IDS internal projection revealed that IDS expected a steady increase in earnings and that by 1953, earnings would be nearly ten times those for 1948 (R. 1060)."

All the record citations refer to discussions of Ex. 220, the Froggatt Report dated April 29, 1949. Assuming *arguendo* the accuracy of petitioners' statement that the "insiders" all saw this*, the fact remains that the statement concerning the tenfold increase in earnings is just not true.

The record reference given for this falsehood is R. 1060, the page of the Froggatt Report which shows that in

* Kirby testified that he did not remember ever having seen it (R. 449-50). Knowledge is imputed to Young on the basis of Purcell's general remark (R. 565) that he discussed with Young "the future prospects of IDS."

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Misstatement in Petitioners' Brief, pp. 11-12

The record facts

1948, IDS had $12,133,100 of "net income available to meet certificate reserves." The previous page (R. 1059) shows that Froggatt expected IDS to have the sum of $13,601,100 available in 1953.

This gradual increase of 12.09% over a five-year period is not, by any standard, a "tenfold increase."

COMMENT:

Parenthetically, we note petitioners' footnoted statement that IDS earned $1.25 per-share in 1948. As we have noted, pp. 20-21, *supra*, per-share earnings cannot be computed from Ex. 220. Assuming, however, that Kirby was capable of making a computation that the Chief Actuary of Froggatt & Co. has testified to be impossible to make, we question how Kirby could have computed earnings of $12.53 a share** on the basis of the 1953 income reflected at R. 1059 if, on actual 1948 income which was almost as high as that projected for 1953, earnings were only $1.25 per-share. This, we submit, is a mathematical feat which even the most scrupulous fiduciary might find difficulty in accomplishing.

Misstatement in Petitioners' Brief, p. 17

"Under Kirby's authorization, Ireland, in an attempt to buy off the claim against Kirby at the cheapest price, joined with the settlement offer or private deal for Phillips whereby Phillips would receive a position paying $45,000 a year for 10 years (R. 2286, 486-487). Phillips rejected the bribe offer (R. 2287, 487)."

Petitioners' persistent attempts to characterize this transaction as a "private deal" or a "bribe" flies in the face of the findings of the District Court:

"Ireland suggested that it might be possible to arrange a consultanship for Phillips . . . the consultanship was not to be a secret matter but something which was to be revealed to the Court as part of the settlement" (R. 2308).

** See table of "computed earnings" appearing at Pet. Br. p. 5.

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Petitioners' citations

R. 486-87—The testimony of Randolph Phillips concerning the so-called "private deal".

R. 2286-87—Exhibit R.P. 27, a contemporaneous memorandum of the conversation, made by Phillips.

The record facts

Petitioners' own record references belie their reckless characterization. Phillips' testimony (R. 486-487) is consistent with his contemporaneous memorandum of his conversation with Ireland (Ex. R.P. 27, R. 2286-2287). That contemporaneous memorandum contains the following explicit statement:

> "CTI [Ireland] explained it was APK's [Kirby's] idea it be publicly announced and put before [the] Court."

Misstatement in Petitioners' Brief, p. 18

"If [the Federal District Court] approved the settlement and lifted the injunction (R. 1363-1364, 933-934, 938-940)."

The record is clear that the federal district court did not approve the settlement of the *Zenn* state court action. The settlement was never presented for approval (R. 918-920; R. 925-926).

Petitioners' citations

R. 1363-1364—Exhibit 392. The first is an excerpt from the hearings where Judge Dimock said "I do approve the settlement . . . Insofar as it is within my power I make that an order of this court . . ."

R. 933-934—Portion of the colloquy before Judge Dimock.

Counsel for the Murchisons made clear that their consent to Judge

The record facts

It is true that in the course of a colloquy, after the Murchisons had joined in the application to have the injunction lifted (on the basis that they would also join in the settlement being presented to the state court), Judge Dimock made the statement, cited by petitioners, which appears at R. 1363-1364. However, his order (Ex. 31, R. 938-940) is clear as to the extent of the action he was taking. The Order re-

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Petitioners' citations	The record facts
Dimock's Order was on the understanding that the state court settlements would dispose of all pending litigation. R-938-940—Ex. 31, the Order of Judge Dimock.	cites that the settlement is being made in the state court *Zenn* action. Moreover, the record (see the comment below) clearly shows that counsel explained to Judge Dimock that he was not being asked to approve the settlement.

COMMENT:

That the trial judge below understood the extent of Judge Dimock's actions is evident from the following:

> "The Court: My recollection of the docket entry is that there was no approval of the settlement in the Federal Court, but what the Federal Court did was lift the injunction to allow the settlement to go ahead in the State Court" (R. 640).

That the trial judge's understanding was correct is evident from the following statements made to Judge Dimock by counsel for Kirby and for the *Breswick* plaintiffs:

> "Mr. Teitelbaum: . . . But all we are seeking to do here is to obtain from your Honor an order saying that a settlement may proceed in the State Court and that if a settlement in the State Court is brought to fruition it may be pleaded here in bar of the action before this court as a matter of res judicata.
>
> "Now, such an application is necessary because when Judge McGivern, in the State Court, in March of this year, confirmed the original settlement he stated in his decision that in view of the pending order of this court, this injunctive order to which our application is addressed, in view of that injunctive order he did not think it would be appropriate for him to enter a final order approving the basic settlement unless and until he were presented with an affidavit showing that the injunction had been lifted and his direction in his decision was that such an affidavit, with a proposed order approving the settlement, be submitted on two days settlement of notice" (R. 918-919).
>
> * * * * *
>
> "The Court: That means, of course, that I would be the one who was deciding whether or not it was a better settlement, and 24 hours is pretty hard time to decide whether it is adequate or not.

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"Mr. Teitelbaum: In our view of the matter it is not necessary for your Honor to decide that question at all.

"The Court: I think you had better leave this for Mr. Brussel.

"Mr. Teitelbaum: All right. Very good, sir" (R. 919-920).

"Mr. Brussel: Yes, I think your Honor should say that because the purpose of Judge Walsh's injunction was to permit us to negotiate in good faith with defendants, and we are coming here and representing that we have negotiated in good faith and reporting to your Honor that we have accomplished the purpose of the injunction as to defendant Kirby. That is the reason that I think your Honor should act and vacate this injunction as to him. We are at long last able to say that as to this one defendant we have gotten what we think is the maximum obtainable on the best possible terms, and in view of that we are prepared to take our chances in the State Court" (R. 925-926).

Misstatement in Petitioners' Brief, pp. 19-20

"The entire panel agreed on three critical propositions:

* * *

3. That facts and relevant documents were not disclosed during the course of the settlement negotiations and hearings regarding claims based upon that transaction (R. 2334-2336, 2348-2349, 2352-2359)."

Nowhere in their opinions did Judges Moore or Kaufman so hold or even suggest.

The record facts

The record references cited by petitioners show, both the majority and concurring opinions, in discussing plaintiffs' charges, carefully referred in quotation marks to "the 'non-disclosed' documents" which plaintiff "claimed" Kirby failed to adduce (Moore, J., R. 2334), "the allegedly non-disclosed' documents" (Moore, J., R. 2336), and the "document which Purcell and Young are alleged to have withheld" (Kaufman, J., R. 2348). After accepting arguendo petitioners' theory of vicarious liability, Judge Kaufman concluded:

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Misstatement in Petitioners' Brief, pp. 19-20

The record facts

". . . I am unable to agree that the conduct of Purcell and Young was such as to warrant overturning the judgment as against Kirby" (R. 2348).

The only proposition on which in fact all three judges of the panel agreed was that, in Judge Friendly's words, "insofar as the plaintiff's case here hinged upon establishing personal dereliction by Kirby with respect to the settlement hearings, this was not made out" (R. 2351, 2347-48, 2346).

APPENDIX C

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION No. 92-205

SADIE ZENN, et al,

Plaintiffs,

against

J. J. ANZALONE, et al, and CLINT W. MURCHISON, JR. and JOHN D. MURCHISON, d/b/a MURCHISON BROTHERS and ALLEGHANY CORPORATION,

Defendants.

[1] Deposition of ROBERT R. YOUNG taken by plaintiffs pursuant to notice dated May 20, 1954, and adjournment, at the offices of Messrs. Pomerantz, Levy & Haudek, 295 Madison Avenue, New York 17, N. Y., on March 29, 1955, at 10:00 a.m., before Edward Grant, a Certified Shorthand Reporter and Notary Public within and for the State of New York.

APPEARANCES:

[2] Messrs. POMERANTZ, LEVY & HAUDEK, General counsel for plaintiffs, 295 Madison Avenue, New York 17, N. Y. By: WILLIAM E. HAUDEK, ESQ., Of Counsel

SIDNEY L. GARWIN, ESQ., Attorney for plaintiff Henry Mencher, 225 Broadway, New York 7, N. Y.

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Messrs. TROTTA & SPATA, Attorneys for plaintiff Nicholas Schepis, 25 Broadway, New York 4, N. Y. By: Messrs. NEMEROV & SHAPIRO, 111 Broadway, New York 6, N. Y. By: LEONARD BRUNNER, ESQ., Of Counsel

Messrs. GEIST & NETTER, Attorneys for plaintiff Carl M. Siroty, 276 Fifth Avenue, New York 16, N. Y. By: MILTON WAXENFELD, ESQ., Of Counsel

Messrs. LORD, DAY & LORD, Attorneys for defendants Robert R. Young, Thomas J. Deegan, Jr., Andrew Van Pelt & Allan P. Kirby, 25 Broadway, New York 4, N. Y. By: THOMAS F. DALY, ESQ., WOODSON D. SCOTT, ESQ., Of Counsel

PETER GEORGE MARTIN, ESQ., Attorney for defendant Alleghany Corporation, 25 Broadway, New York 4, N. Y.

PRESENT:

[3] ERIC J. KLINGER, CPA, On behalf of plaintiffs, 295 Madison Avenue, New York 17, N. Y.

DAVID W. WALLACE

Mr. Haudek: Mr. Scott, shall we have the same stipulations as on Mr. Wallace's examination?

Mr. Scott: Yes.

ROBERT R. YOUNG, called as a witness by plaintiffs, having first been duly sworn by the Notary Public (Edward Grant) and stating his residence as Ruggles Avenue, Newport, Rhode Island, testified as follows:

Appendix C

Examination by Mr. Haudek:

Q. Mr. Young, you are one of the defendants herein? A. Yes.

Q. You are chairman of the board of Alleghany Corporation? A. Yes.

Q. And you have been the chairman since when? A. May 5, 1937.

* * * * *

[16] Q. What discussions were had at the board meetings concerning the financial and economic prospects of IDS? A. There were long discussions on that subject, particularly on the unfavorable side; we stressed the hazards involved in the purchase, because in laying such a radical departure from Alleghany's long-ferm investment policy, I [17] felt the heavy responsibility of putting Mr. Kirby and the other directors into a situation which involved the gravest possible political and public relations problems.

Q. Those, I suppose, were not the reasons why you finally recommended the purchase? I take it, Mr. Young, that there were reasons which were not only deterrents, but which were advanced to support the purchase? A. Finally, after a month or two's reflection, the board decided to make the purchase.

Q. I think you told us that you recommended to the board to make the purchase and that in making that recommendation, you, I take it, advanced certain reasons for your recommendation, in support of your recommendation? A. Yes.

Q. Will you tell us what those reasons were, as you stated them to the board? A. In brief, it was that if we were successful here in carrying this company through the

$400 million of maturities which it would face over the next few years and were successful in clearing up the consent decree under which it operated with the Securities and Exchange Commission and keeping its sales organization in operation—and it was being severely criticized not only by the SEC but by the Banking Commissions of the states in which they [18] sold securities, by reason of the fact that the company had no capital and surplus—and if the recession which was then predicted by most economists was not too severe and if there were no changes in the Housing Company Act—at that time the company was realizing some unexpected profits in the Mortgage Department which might be non-recurring—and if the preferred stock portfolio of the company, which at that time was way underwater, should recover to its cost and a lot of other ifs, that the possibilities for profit were large.

Q. You were referring to a consent decree of the Securities and Exchange Commission. Would you kindly tell us what the nature of the consent decree was? A. Back in 1940, under the previous management, the Securities and Exchange Commission had alleged that the company had followed certain unlawful practices in its sales operations and, in effect, had put the company on probation, since under the Investment Company Act the SEC had the power to put it out of business, and the company was still operating under that consent decree, which we no longer regard as serious, but at that time was extremely serious.

Q. I believe, if I understood you correctly, that one of the "ifs" you mentioned was if this consent decree could [19] be cleared away— A. If the consent decree—if we

could continue to operate without SEC interference and interference by the banking commissions.

Q. The consent decree is still in effect? A. Yes. As a matter of fact, I think that was one of the principal reasons that Gamble wanted to get out. He was fearful that the company would be put out of business by this consent decree, coupled with the fear he had that the maturities would bankrupt the company, the early maturities of the certificates.

Q. Is that one of the things he told you was the reason that he wanted to get out? A. He didn't tell me that. We assumed that.

Q. At that time you considered the consent decree as a serious threat to the company? A. Extremely.

Q. Was it your information at that time that the company was still engaging in illegal practices? A. No, those practices had been stopped, but they were of such nature, they were extremely difficult to control, because there were 2,000 salesmen involved, and at any moment, despite your instructions, one of those salesmen might do something which the SEC would take as [20] grounds for putting you out of business. It was an extremely hazardous situation.

* * * * *

[48] By Mr. Haudek:

Q. In Exhibit 53 I find the chairman, that is, Mr. Young, stating that registration of the 48,000-odd Class A shares would not be worthwhile in view of the size of the holding and the costs and delays incident to registration.

Mr. Daly: Of course, that isn't stated in the minutes that you are reading from.

Mr. Haudek: I read literally in the minutes that the chairman stated "* * * that he had been advised

[49] by Messrs. White & Case, counsel for the Corporation in this connection, that inasmuch as the Corporation is in control of Investors Diversified Services, Inc., no offer to stockholders of these shares (referring to the 48,225 Class A shares) could be made without registration with the Securities and Exchange Commission which, in view of the size of the holding and the costs and delays incident to registration, would not be worthwhile."

Mr. Daly: That is right.

Mr. Haudek: That is frankly what I intended to paraphrase, what I have now read verbatim.

By Mr. Haudek:

Q. When you said that in view of the size of the holding the costs and delays would not be worthwhile, was that a statement of your own view or was that a statement of something that White & Case had advised you? A. I think Mr. Purcell was much more concerned with the matters other than expense in the making of a registration, because it would have meant publicizing nationwide the nature of the consent decree under which IDS was then operating, and I know that he urged upon me at that time that it was not in the interests of IDS to spell out in that registration statement, the fact that [50] at that time the company had no capital and surplus and other facts, which the SEC was well aware of and was anxious that IDS shouldn't cause any unrest among the certificate holders and cause them perhaps to make a run on the bank. . . .

* * * * * *

[52] Q. Did you keep, during this 1949 period, informed about the financial condition of IDS? A. Generally, yes.

Q. How did you do that? A. Almost entirely through oral conversations with Mr. [53] Purcell coupled with the regular monthly reports which I got from IDS.

Q. You received monthly reports from IDS? A. Yes. I didn't always read them, but I received them.

Q. Were those reports in the form of financial statements? A. Yes.

Q. Those monthly statements and reports, are they available in the files of Alleghany? A. Yes.

Q. I would ask for their production. A. Surely.

Q. You also received quarterly reports from IDS? A. Yes.

Q. And those are likewise available? A. Yes.

Q. I also ask for their production. A. Yes. They are made public.

Mr. Daly: Those are the ones that have been marked for identification.

(Discussion off the record.)

By Mr. Haudek:

Q. Were those monthly and quarterly reports prepared [54] by the bookkeeping or accounting staff of IDS? A. Yes.

Q. Not by outside public accountants? A. They were audited annually.

Q. And also semi-annually? I understand? A. Yes.

Q. This practice of preparing monthly and quarterly reports continued throughout the entire period that Alleghany was connected with IDS? A. Yes, they came to Mr. Purcell.

Q. I mean the practice of preparing these reports continued throughout this period? A. Yes, just like any other corporation.

Mr. Haudek: My request for these monthly and quarterly reports would include 1949, 1950 and 1953.

Mr. Daly: 1949, 1950 and 1953?

Mr. Haudek: That is correct.

Mr. Daly: You don't want 1951 and 1952?

Mr. Haudek: I would like to have them. Let me put it this way: I don't want to pose it in terms of a demand, but I would appreciate receiving them.

Mr. Daly: Mr. Scott has expressed some doubt to me that there are such reports in existence. I don't know. Mr. Young seems to think they are, but [55] if they are available, you will have them.

Mr. Scott: I don't know of any.

By Mr. Haudek:

Q. Mr. Young will cause a search to be made? A. Surely.

(Discussion off the record.)

Mr. Daly: As I understand it, it may be that the reports that Mr. Young is referring to are merely reports which were given to him by Mr. Purcell and which may have been taken back by Mr. Purcell and which are not in the possession of Alleghany.

Mr. Wallace has advised me that he did make a search for all such reports and there are none in the Alleghany files.

* * * * *

[62] Q. In addition to this published report, did IDS also prepare for the use of its own management a more detailed year-end financial statement? A. I am sure that they have reports covering the operation of all departments which are used internally, as is true of any corpo-

ration, particularly voluminous in a corporation that got as much control and regulation by state authorities as IDS got.

* * * * *

[90] Q. Did you, from time to time, receive forecasts or prognoses concerning the respective developments of the IDS business? A. The company kept projections of its maturity obligations and the available funds with which to meet it, yes.

Q. Apart from maturity obligations and cash available to meet them, did you also receive or make forecasts of earnings in other branches of the business, such as mortgage operations? A. I didn't, no.

[91] Q. You did not make them? A. No.

Q. But did you receive them? A. I am sure that I received projections, from time to time, of funds available for the meeting of these certificate reserves.

Q. I think you have referred to those, Mr. Young, and I would ask you to put that particular problem aside for a minute, and to turn to the question of earnings forecasts, such as forecasts of earnings from mortgage operations. A. I think I received such forecasts as I did of sales and all other activities of the company.

Q. Do you have any recollection at what time these forecasts were made? A. I think they were made currently, as part of the corporation's regular routine.

Q. When you say "currently," would you say from month to month? A. I would say once a year the company would make a projection of its outlook over a period of five years.

Q. When you speak of a period of five years, you are probably again referring now to maturities as they would

be met? [92] A. Maturities and income and sales and all the activities of the company, a normal budgetary program which most well-run companies have.

Q. Would there be, for instance, in this budget also a forecast of mortgage operations and their results? A. There very likely would.

Q. I would ask you to have a check made for the existence of any such budgets or forecasts or projections of earnings in any form whatever, in the form of a memorandum, or in the form of a financial statement, or a report, and I would surely appreciate your furnishing those. A. Gladly.

Q. I am referring most particularly to those covering the years 1949, 1950, 1953, 1954. A. Surely.

Mr. Daly: With reference to IDS, of course.

Mr. Haudek: Always IDS.

Mr. Daly: If they are available, we will produce them.

By Mr. Haudek:

Q. My request will include any kind of forecast, both as to the nature of earnings from mortgage operations as well as any other aspects of the business of IDS. A. Naturally.

• • • • •

[106] Q. What I am trying to understand is, back in 1949 and 1950, when apparently there was no plan to abandon that line of business [construction loans], did you then— A. There was no plan, but there was a great deal of [107] uncertainty as to whether each new Congress would continue the FHA Act, so that it looked highly

speculative to Gamble and Crabb, and so much so that they decided to sell their stock.

Q. Did you at that time consider the profits from the construction loan fees as non-recurrent profits? A. I considered them highly speculative.

• • • • •

APPENDIX D

File No.

INVESTORS DIVERSIFIED SERVICES, INC.
MINNEAPOLIS

OFFICE OF THE PRESIDENT
E. E. CRABB

August 10, 1950.

EXHIBIT 356-TTT
DATE 11-7-55
H. B. S.

TO DIRECTORS, INVESTORS DIVERSIFIED SERVICES, INC.

The attached is an interesting analysis of cash flow, the figures for the period January 1 to June 30 being final and those for January 1 to July 31 being tentative. There will probably be very little if any change in the latter.

From the standpoint of our mortgage financing, the cash flow of the two companies must be considered as one operation. It is of interest to note that the combination of the funds of the two companies has been considerably better than our projections. This is due partially to the substantial increase in the mortgages retained, which in turn increases the volume of amortizing payments, and partially to prepayments of mortgages in somewhat higher volume than anticipated. The following brief tabulation combines the contractual receipts and contractual disbursements on the actual and estimated bases:

RECEIPTS

	(000's Omitted) Actual	Estimated
Investors Diversified Services	$45,489	$38,708
Investors Syndicate of America	30,911	28,830
Total	$76,400	$67,538
Excess		$ 8,862

DISBURSEMENTS

Investors Diversified Services	$30,266	$29,195
Investors Syndicate of America	9,370	9,500
Total	$39,636	$38,695
Excess		$ 941
Net		$ 7,921

It is pleasing to note also that in spite of the increasing volume of certificate maturities, the contractual cash receipts continue to exceed the amount of contractual disbursements. Actual contractual receipts for the month of July were $6,660,000 and contractual disbursements were $4,271,000 or a favorable balance of approximately $2,400,000.

It will be observed, too, from this statement that we have substantially reduced the securities portfolios of both companies, the excess of securities sales over purchases being approximately $22,000,000 for the seven months' period.

The management of our cash flow is under good control. The only phase of it which gives me some concern is the substantial reduction in our reserve of Government bonds. The total Government holdings of the two companies as of today are approximately $2,900,000 out of combined assets of approximately $430,000,000 or about 7/10 of 1%. While there is nothing in the immediate future to give us any concern, it would seem to me the part of prudence to rebuild this cushion just as soon as circumstances will permit. At December 31, the two companies combined owned about $12,000,000 in Governments. It is doubtful whether we can rebuild this position to that figure between now and December 31, but with faster deliveries of completed mortgages to FNMA and institutional buyers later this year, it should be possible to restore some of this and possibly by early spring next year to build our holdings back to a safer figure.

E. E. CRAIG

EEC:hc
Enc.

INVESTORS DIVERSIFIED SERVICES, INC.
AND
INVESTORS SYNDICATE OF AMERICA, INC.

A Comparison of the Actual Cash Receipt and Disbursement Transactions to the Estimated Cash Receipts and Disbursements from January 1, 1950 through July 31, 1950

TENTATIVE

Contractual Receipt and Disbursement estimates were made in December 1949 and based on data available as of September 30, 1949 and November 30, 1949. Estimated Mortgage Receipts for the Second Quarter were revised in March 1950 and for the Third Quarter in June 1950. The Mortgage Sales and Fundings estimates were made by the Mortgage Department at the beginning of each quarter.

(000's Omitted)

	Investors Diversified Services, Inc. January 1, 1950 Through July 31, 1950		Investors Syndicate of America, Inc. January 1, 1950 Through July 31, 1950	
	Actual	Estimated	Actual	Estimated
Cash Balance December 31, 1949	$ 7,812		$ 2,796	
RECEIPTS				
Contractual Receipts:				
Mortgage Payments:				
Amortization	$ 14,084	$ 10,218	$ 4,796	$ 4,683
Payoffs, Maturities & Partial Releases (Less Refinances & Partial Releases on Blanket Loans)	12,873	10,788	2,352	1,434
TOTAL Mortgage Payments	$ 26,957	$ 21,006	$ 7,148	$ 6,117
Certificate Payments	9,485	9,260	21,825	20,762
Certificate Loan Repayments	1,363	1,145	383	350
Interest on Bonds & Dividends on Stocks	1,240	1,267	555	601
Underwriting Fees	5,045	4,871		
Investment Management & Mtge. Service Fees	1,261	1,082		
Bond Maturities	138	77	1,000	1,000
TOTAL Contractual Receipts	$ 45,489	$ 38,708	$30,911	$28,830
Sale of Assets:				
Mortgage Sales to Others	$ 43,074	$ 46,013	$ 9,387	$ 9,387
Mortgage Sales to Subsidiaries	39,354			
Sale of Securities	14,955		15,204	
Mortgage Prepayments—IDS			4,582	
TOTAL Sale of Assets	$ 97,383		$29,173	
Total Miscellaneous Receipts	7,899		75	
Trust & Custodial Collections	16,295		977	
TOTAL RECEIPTS	$167,066		$61,137	
DISBURSEMENTS				
Contractual Disbursements:				
Certificate Maturities & Opt. Sett. Pmts.	$ 15,667	$ 15,639	$ 156	$ 140
Certificate Surrenders	4,470	4,009	3,417	3,377
Certificate Loans	2,948	2,925	2,059	2,215
Commissions	3,273	2,976	2,827	2,908
Expenses	3,908	3,646	911	860
TOTAL Contractual Disbursements	$ 30,266	$ 29,195	$ 9,370	$ 9,500
Investments:				
Mortgage Loans (Less Refinances & Partial Releases on Blanket Loans)	$115,627	$114,165	$36,119	
Securities Purchased	2,750		5,169	
Mortgage Fundings			8,800	$ 8,800
TOTAL Investments	$118,377		$50,088	
Total Miscellaneous Disbursements	4,063		100	
Trust & Custodial Disbursements	15,627		593	
TOTAL DISBURSEMENTS	$168,333		$60,151	
Cash Balance—July 31, 1950	$ 6,545		$ 3,782	
Less: Funds Held in Special Account	(3,671)		(1,137)	
Add: Cash In Transit	150		150	
Unrestricted Cash & Cash on Deposit	$ 3,024		$ 2,795	

Treasury Department
August 9, 1950

INVESTORS DIVERSIFIED SERVICES, INC.

AND

INVESTORS SYNDICATE OF AMERICA, INC.

A COMPARISON OF THE ACTUAL CASH RECEIPT AND DISBURSEMENT TRANSACTIONS TO THE ESTIMATED CASH RECEIPTS AND DISBURSEMENTS FROM JANUARY 1, 1950 THROUGH JUNE 30, 1950

Contractual Receipt and Disbursement estimates were made in December 1949 and based on data available as of September 30, 1949 and November 30, 1949. Estimated Mortgage Receipts for the Second Quarter were revised in March 1950. The Mortgage Sales and Fundings estimates were made by the Mortgage Department at the beginning of each Quarter.

(000's Omitted)

	Investors Diversified Services, Inc. January 1, 1950 Through June 30, 1950		Investors Syndicate of America, Inc. January 1, 1950 Through June 30, 1950	
	Actual	Estimated	Actual	Estimated
Cash Balance December 31, 1949	$ 7,812		$ 2,796	
RECEIPTS				
Contractual Receipts:				
Mortgage Payments:				
Amortization	$ 12,035	$ 8,518	$ 3,984	$ 4,033
Payoffs, Maturities & Partial Releases (Less Refinances & Partial Releases on Blanket Loans)	10,773	8,888	2,102	1,234
TOTAL Mortgage Payments	22,808	17,406	6,086	5,267
Certificate Payments	8,375	8,200	19,164	18,262
Certificate Loan Repayments	1,192	1,000	349	300
Interest on Bonds & Dividends on Stocks	1,044	1,037	473	496
Underwriting Fees	4,172	4,071		
Investment Management & Mtge. Service Fees	1,100	992		
Bond Maturities	138	77	1,000	1,000
TOTAL Contractual Receipts	38,829	32,783	27,072	25,325
Sales of Assets:				
Mortgage Sales to Others	38,814	41,053	9,247	9,247
Mortgage Sales to Subsidiaries	33,017			
Sale of Securities	12,414		12,146	
Mortgage Prepayments—IDS			3,952	
TOTAL Sale of Assets	84,245		25,345	
Total Miscellaneous Receipts	7,540		75	
Trust & Custodial Collections	13,867		863	
TOTAL RECEIPTS	$144,481		$53,355	
DISBURSEMENTS				
Contractual Disbursements:				
Certificate Maturities & Opt. Sett. Pmts.	$ 13,523	$13,418	$ 131	$ 119
Certificate Surrenders	3,845	3,439	2,827	2,907
Certificate Loans	2,422	2,552	1,763	1,905
Commissions	2,823	2,545	2,366	2,448
Expenses	3,382	3,137	747	740
TOTAL Contractual Disbursements	25,995	25,091	7,834	8,119
Investments:				
Mortgage Loans (Less Refinances & Partial Releases on Blanket Loans)	99,843	97,700	30,007	
Securities Purchased	2,750		4,664	
Mortgage Fundings			8,800	$ 8,800
TOTAL Investments	102,593		43,471	
Total Miscellaneous Disbursements	3,573		100	
Trust & Custodial Disbursements	12,152		467	
TOTAL DISBURSEMENTS	$144,313		$51,872	
Cash Balance—June 30, 1950	$ 7,980		$ 4,279	
Plus: Special Trust Acct. Loan Correspondents	390			
Less: Funds Held In Special Account	(4,054)		(1,047)	
Less: Cash In Transit	(831)		(830)	
Unrestricted Cash & Cash on Deposit	$ 3,485		$ 2,402	
Less: Canadian Discount	(42)			
Net Cash After Adjustment for Canadian Exchange	$ 3,443			

Treasury Department
August 1, 1950

APPENDIX E

Market Price of IDS Class A Non-Voting Stock, as of the close of each business week, from May 1950 thru December 1954

NATIONAL QUOTATION BUREAU
INCORPORATED

46 Front Street
New York 4, N. Y.

CHICAGO
PHILADELPHIA

BOSTON
SAN FRANCISCO

February 1, 1966

A Report

Quotations—From The National Daily Quotation Service—Eastern Section

Issue—Investors Diversified Services Inc. (Minnesota) Class A Non-Voting Stock

1950		High Bid	Low Asked
May	5	Not Quoted	
	4	11	12
	12	12	13
	19	12½	13½
	26	12¾	None
June	2	13	14
	9	13	None
	16	13½	15
	23	15¼	16¼
	30	15	16½
July	7	15	16½
	14	15	15½
	21	14¾	15¾
	28	13½	14½

Appendix E

1950		High Bid	Low Asked
Aug.	4	None	14½
	11	13	14
	18	13½	14¼
	25*	14	None
Sept.	1	14¾	None
	8	14¾	15¾
	15	15	16
	22	Not Quoted	
	20	15½	None
	29	16	16¾
Oct.	6	16	None
	13	17½	None
	20	18½	None
	27	21	23
Nov.	3	21½	22½
	10	22	None
	17	22	23
	24	22	23¼
Dec.	7	25½-23	27½-25½ Range
	8	25½	27
	15	25½	27
	22	27-25½	28-27 Range
	29	28	29½

1951		High Bid	Low Asked
Jan.	5	30	32
	12	35	37
	19	36	37
	26	38½	39½

* Received by mail on date of publication.

Appendix E

1951		High Bid	Low Asked
Feb.	2	40	41
	9	39½	40¼
	16	39¼	40
	23	39-38	40½-39 Range
Mar.	2	37½	39
	9	36	38
	16	36½	37½
	22	36¾	37¾
	30	36¾	37½
Apr.	6	36½	37½
	13	36½	38
	20	37	38
	27	36¾	37½
May	4	36½	37
	11	35½	36¼
	18	35½	36¼
	25	35	35¾
June	1	34¾	35½
	8	34¼	35¼
	15	33¾	34¾
	22	34	34¾
	29	33	34
July	6	33	34
	13	33	33⅝
	20	32¾	33¼
	27	32¼	33
Aug.	3	32	32¾
	10	32	33
	17	32	33
	24	32	33
	31	32¼	33

Appendix E

1951		High Bid	Low Asked
Sept.	7	34	34½
	14	38	39½
	21	39	40½
	28	39½	40½
Oct.	5	39	41
	11	38½	39½
	19	37½	39
	26	36	37½
Nov.	2	36	37
	9	35¾	37
	16	35½	37
	23	36	37½
	30	36	37½
Dec.	7	36	37½
	14	37	38
	21	37	38½
	28	37½	39

1952		High Bid	Low Asked
Jan.	4	39	40
	11	39¾	41
	18	40	41½
	25	40	41½
Feb.	1	41	42½
	8	41¼	42
	15	41½	42½
	22	42½	44
	29	43½	45
Mar.	7	43	45
	14	44½	46
	21	47	48
	28	48½	50

Appendix E

1952		High Bid	Low Asked
Apr.	4	49	50
	10	50½	51½
	18	50½	52
	25	51	52
May	2	50½	52
	9	52-50½	53-52 Range
	16	51	52½
	23	52	53
	29	52	53
June	6	53	54½
	13	54½	55
	20	55½	None
	27	57	None
July	3	57	60
	11	60	64
	18	65½	67½
	25	65½	67½
Aug.	1	65	66
	8	None	66½
	15	63	64
	22	62½	64
	29	62	64
Sept.	5	65	66½
	12	68	None
	19	81	84
	25	85	86
Oct.	3	85½	86
	10	84	85½
	17	82½	84
	24	85½	86¼
	31	90-88	91-90 Range

Appendix E

1952		High Bid	Low Asked
Nov.	7	93½	95½
	14	94½	95½
	21	93	94½
	28	90	91
Dec.	5	85½	87
	12	89½	90½
	19	90	90½
	26	90½	91½

1953		High Bid	Low Asked
Jan.	2	89¾	90¾
	9	90	90½
	16	88½	90
	23	92	92½
	30	95¾	96¾
Feb.	6	96	96¾
	13	94	94½
	20	92½	93
	27	93½	94½
Mar.	6	92¾	93¼
	13	92¾	93½
	20	91½	92¼
	27	89½	91
Apr.	3	89½	90½
	10	88½	89
	17	88-86	89½-88 Range
	24	83½	84½
May	1	83	84
	8	90½-88½	92-90½ Range
	15	92	93
	22	96	97
	29	96½	97

Appendix E

1953		High Bid	Low Asked
June	5	94	95
	12	90-88	91½-90 Range
	19	89½	90½
	26	90	90½
July	3	92	92½
	10	95	96½
	17	93½	94½
	24	96-94	98-96 Range
	31	95½	96½
Aug.	7	96½	97¼
	14	94½	95½
	21	94¾	95½
	28	89	90½
Sept.	4	88½	90½
	11	88-86½	90-88 Range
	18	83	84
	25	90	91
Oct.	2	93	94
	9	92	93
	16	91½	93
	23	91	92½
	30	91	92
Nov.	6	93½	95
	13	93½	94
	20	96	96½
	27	99	100
Dec.	4	99	100½
	11	99	100
	18	100	101
	24	100	100½
	31	103	104

Appendix E

1954		High Bid	Low Asked
Jan.	8	119	122
	15	126	127
	22	130-127	131-130 Range
	29	131	133
Feb.	5	146	149
	12	150	152
	19	150-146	153-149 Range
	26	140-134	142-139 Range
Mar.	5	142	144
	12	145	147
	19	151	153
	26	154	156
Apr.	2	181	184
	9	176	181
	15	180	183
	23	36¾	37
	30	42-40½	43-42 Range
May	7	41-40¼	42-41 Range
	14	38½	39
	21	40	40¼
	28	38¼	38¾
June	4	37½	38½
	11	36½-35½	37¼-36½ Range
	18	39½-38½	40½-39½ Range
	25	39	39⅜
July	2	36½	37¼
	9	36¾	37¼
	16	39¼-36¾	39½-37¾ Range
	23	39-38	40-39 Range
	30	39	39¼

Appendix E

1954		High Bid	Low Asked
Aug.	6	38¾	39
	13	39	39¼
	20	39	39½
	27	39¼	39½
Sept.	3	38¾	39¼
	10	39¼	39¾
	17	40⅝-39½	41⅛-40½ Range
	24	46¾-45	47½-44½ Range
Oct.	1	52½	53
	8	51	51½
	15	50¾	51¼
	22	50¾	51½
	29	50½	51
Nov.	5	52½-51¼	53¼-52 Range
	12	59¼	60
	19	62-61	63-62 Range
	26	64½	65½
Dec.	3	69	69¾
	10	75	75½
	17	72½	73½
	23	74	75
	31	72¾	73½

NOTE—The above quotations represent prices between dealers and do not include retail mark-up, mark-down or commission. They do not represent actual transactions, and have not been adjusted for stock dividends or splits.

NATIONAL QUOTATION BUREAU, INC.
UGO BOERO
Ugo R. Boero
Assistant Secretary

URB:j

APPENDIX F

Supreme Court of the State of New York

COUNTY OF NEW YORK

ROBERT R. YOUNG, *et al.*,

Plaintiffs,

—against—

PERCY J. EBBOTT, *et al.*,

Defendants.

Before:

HON. HARRY GROSSMAN,

Referee.

Examination of the plaintiff, ROBERT R. YOUNG, on Wednesday, May 19, 1954, at 10:30 A. M. in the Trial Room of the Association of the Bar, 42 West 44th Street, New York City.

RAY ELBAUM
Certified Shorthand Reporter
154 Nassau Street
New York City

Appendix F

Supreme Court of the State of New York

COUNTY OF NEW YORK

ROBERT R. YOUNG, *et al.*,

Plaintiffs,

—against—

PERCY J. EBBOTT, *et al.*,

Defendants.

Before:

HON. HARRY GROSSMAN,

Referee.

[144] Continued examination of the plaintiff, ROBERT R. YOUNG, on Thursday, May 20, 1954, at 10:30 A.M., in the Trial Room of the Association of the Bar, 42 West 44th Street, New York City.

RAY ELBAUM
Certified Shorthand Reporter
154 Nassau Street
New York City

Appendix F

Young

[184] by Mr. Friendly:

Q. Could you tell us, Mr. Young, what the relationship of Investors Mutual Incorporated and Investors Diversified Service System is in a general way? A. The Mutual is the Mutual Company whose investments of theirs are managed by the I. S. A.

Q. What is I. S. A.? A. That is a wholly-owned subsidiary of I. D. S.

Q. And is Investors Mutual a subsidiary of one or the other of those companies? A. I think it could be called a subsidiary, yes.

[185] Q. Who were the principal owners of [186] Investors Diversified Service System? A. Alleghany owned more than a majority of the voting shares. The balance of the voting shares and the non-voting shares are widely held except for an important block owned by the Murchison interests.

Q. That was the block that was sold to them late in 1953? A. Well, they were already large owners before we sold them that block.

Q. Had they become large owners through purchases on their own account? A. Yes.

Q. And you and Mr. Kirby are substantial owners? A. Yes, some of the stock sold to the Murchisons I sold, unfortunately.

Q. You sold it to them at $125 a share? A. No, I think I sold, it seems to me it was around 90, I am sorry to say.

Q. And that stock had cost you $8.00 a share? A. I don't remember the cost. It was very little.

Q. But you had acquired it from the company directly, had you not?

Mr. Daly: I think now we are going a little bit far afield. I assume you are inquiring under [187] Item 10, but I don't see what stock ownership has to do with that, and I am objecting to the continuation of this line of inquiry.

Mr. Friendly: I am inquiring as to the nature and testimony of Mr. Young and I. D. S., and how I. D. S. became involved in this proxy.

Mr. Daly: Now you are asking about the sale of some stock which has nothing to do with it at all.

The Referee: I will allow the question.

The Witness: What was the question?

Mr. Friendly: The question was whether you had acquired at approximately $8:00 a share from Alleghany stock of I. D. S. which you subsequently sold at 90, and which now you say is worth considerably more.

The Witness: Mr. Kirby and I acquired certain I. D. S. shares from Alleghany in exchange for certain other valuable securities, all as approved by the stockholders of Alleghany Corporation.

[188] by Mr. Friendly:

Q. And you acquired the I. D. S. stock for $8 a share in 1950, although it earned about $20 that year, didn't you?

Mr. Daly: Now, I object to this. It is completely irrelevant.

The Referee: I will sustain it.

By Mr. Friendly:

Q. Who is Chairman of the Board of I. D. S.? A. Robert Purcell.